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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/613,486	MUELLER ET AL.	
	Examiner	Art Unit	
	Jennifer E. Novosad	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 July 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-7 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-7 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 03 July 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 08-25-2003.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Objections

Claim 7 is objected to because in line 3 of claim 7, "and and" should be changed to --and--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 3, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations of claims 2 and 3 render the claims indefinite. *In particular*, a supporting article of manufacture, i.e., "an article", is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added an article. In other words, a device as defined in the claims would infringe the claim with one particular article while the exact same device would not infringe the claim when another article is used. *Accordingly*, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element.

Claim 6 is rendered indefinite since the claim improperly seeks to further define a functionally recited structure, i.e., the article, and thus the metes and bounds of the claim cannot be properly ascertained since if the article is not present, the claim doesn't further the claimed structure of the device.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,688,684 (Young *et al.* '684).

Young *et al.* '684 disclose a generally circular stacking device (13) comprising a stacking surface (14) having a configuration *for supporting an article stacked thereon* and a support surface (17) opposite the stacking surface (14) *for direct communication* (see Figure 3) with an article below the support surface (17).

Claims 1, 2, and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,845,791 (Kawolics '791).

Kawolics '791 discloses a stacking system comprising a plurality of different shaped polygonal stacking devices (see Figures 7-9) whereby each device comprises a stacking surface (top, upper surface area, e.g., as viewed in Figures 7-9) *for supporting an article stacked thereon*

and an opposite support surface *for direct communication* with an article disposed below (see Figure 6).

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,172,013 (Parry '013).

Parry '013 discloses a polygonal shaped device (9) having a stacking surface (top, upper surface area of 17) *for supporting an article stacked thereon* and an opposite support surface *for direct communication* with an article disposed below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young *et al.* '684, alone.

Young *et al.* '684 disclose the device as advanced above.

The claims differ from Young *et al.* '684 in requiring: (a) the support surface to comprise an ellipse (claim 3), (b) the surfaces to comprise a machine washable material (claim 4), and (c) the article to comprise a wire mesh shelf (claim 6).

With respect to (a), it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the device in the shape of an ellipse for increased aesthetic appeal.

With respect to (b), although Young *et al.* '684 do not disclose the material from which the surfaces are made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the surfaces of a machine washable material, since the surfaces support bottles comprising liquids which would have to be washed away if spilt on the surfaces (14, 17) of the device, thereby increasing ease in use to the consumer.

With respect to (c), insomuch as the claim is best understood, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a wire mesh shelf could be stored on the device, thereby increasing storage capabilities of the device.

Claims 3, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawolics '791, alone.

The claims differ from Kawolics '791 in requiring: (a) the support surface to comprise an ellipse (claim 3), (b) the surfaces to comprise a machine washable material (claim 4), and (c) the article to comprise a wire mesh shelf (claim 6).

With respect to (a), it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the device of Figure 7 in the shape of an ellipse for increased aesthetic appeal.

With respect to (b), although Kawolics '791 does not disclose the material from which the surfaces are made, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the surfaces of a machine washable material, thereby increasing aesthetic appeal since the devices can be cleaned easily

With respect to (c), insomuch as the claim is best understood, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a wire mesh shelf could be stored on the device, thereby increasing storage capabilities of the device.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parry '013, alone.

Parry '013 discloses the device as advanced above.

The claims differ from Parry '013 in requiring: (a) the surfaces to comprise a machine washable material (claim 4), and (b) the surfaces to comprise a heat resistant material (claim 5).

With respect to (a), although Parry '013 does not explicitly state that the surfaces are comprised of a washable material, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the surfaces from such a material, since the assembly holds food items, thereby increasing sanitary conditions.

With respect to (b), although Parry '013 does not recite that the surfaces are made from a heat resistant material, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the surfaces from such a material, since the assembly holds hot food items, thereby increasing safety to a user.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
December 6, 2004